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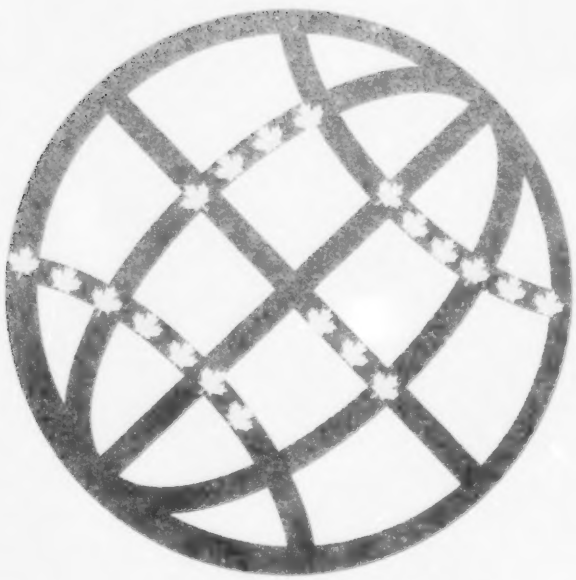

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THE CURRENT DIALOGUE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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Discussion Paper for the Roundtable on Economic, Social and Cultural Rights

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THE CURRENT DIALOGUE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Discussion Paper by Allan McChesney[1]

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1. INTRODUCTION

This document is a resource for the May 1999 Roundtable on economic, social and cultural rights, part of a review/assessment of how Canada does human rights abroad and of how lessons and best practices might indicate directions for the future. During two (plus) days of dialogue, participants will have opportunities to address additional issues that inevitably will arise during their exchange of views. Our common purpose is to generate informed discussion. Any opinions stated by the author are not necessarily shared by either the Canadian Centre for Foreign Policy Development or the Department of Foreign Affairs and International Trade (DFAIT).

Although Roundtable participants have expertise in many facets of economic, social and cultural rights, it is appropriate to provide basic introductory notes on international obligations. Among the international economic, social, and cultural rights (ESCR) are: adequate food, housing, health and education; an adequate standard of living for self and family; safe and healthful working conditions; trade union rights; the right to participate in the cultural life of a community; and the right to benefit from scientific progress and from one's own creativity. Neither ESCR nor civil and political rights (CPR) such as the freedoms of expression and association have primacy; and all rights are interdependent.

The main monitoring procedures for human rights treaties that bind Canada are: periodic self-reporting by countries to UN and regional bodies consisting of "independent experts"; alternative reports conveyed to the same bodies by non-governmental organizations (NGOs); and published observations from the expert bodies. This model is used for the core treaties that reinforce virtually all rights proclaimed in the 1948 *Universal Declaration of Human Rights*, namely the *International Covenant on Civil and Political Rights* (1966) and the *International Covenant on Economic, Social and Cultural Rights* 1966). To effect change the treaty monitoring bodies must rely primarily on giving advice and on mobilization of shame for States that do not comply with their obligations. Similar approaches are used for key UN treaties on racial discrimination, on the rights of women and on the rights of children, respectively. The latter two human rights instruments address many ESC rights as well as CP rights.

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[1] Allan McChesney is a Canadian lawyer and legal educator, and Director of *Justice and Democracy Consultants*, Ottawa. His next publication on human rights will be a *Handbook on Economic, Social and Cultural Rights* (forthcoming 1999, in printed and Web-based formats). The *Handbook* is the introductory volume for the ESC Rights Violations Project, coordinated by HURIDOCS and the American Association for the Advancement of Science.

Although employment-related rights are found in the UN treaties mentioned, the central vehicle for promoting workers' rights is the International labour Organization (ILO) and its Conventions. ILO monitoring bodies include representatives of management, labour and government.

UN instruments ensure rights to everyone without discrimination on the basis of "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Additional group-related rights pertain to minority and indigenous groups. The *Convention on the Rights of the Child* also prohibits discrimination on the basis of disability. All major UN and regional human rights instruments guarantee equal rights to women and men, in addition to non-discrimination.

States Parties to the *Covenant on Economic, Social and Cultural Rights* must make progress over time on ESC rights, to "the maximum of available resources". The UN Committee on Economic, Social and Cultural Rights has developed standards for assessing whether States are carrying out serious and appropriate planning, legislative and other measures to meet their treaty obligations. Experts now commonly refer to the obligations of States to respect, protect, promote and fulfil/ensure the enjoyment and advancement of ESCR. Although progress is to be achieved gradually by a country, its failure to carry out the listed obligations, for example through discrimination, or through State actions that destroy enjoyment of rights (such as armed eviction of farmers or migrants), constitutes an immediate violation of an ESC right.

Readers may judge that in striving to encapsulate a complex discipline in a few paragraphs, the author has rounded off a few intellectual corners; fortunately, there will be ample occasion for reparative discourse during the Roundtable.

2. THE CHANGING INTERNATIONAL CLIMATE FOR ECONOMIC, SOCIAL AND CULTURAL RIGHTS

2.1 Background

Although Canada is one of at least 140 countries to have ratified the *International Covenant on Economic, Social and Cultural Rights*, neglect of economic, social and cultural rights (ESCR), relative to civil and political rights, was once the norm. A lack of attention and resources devoted to ESCR within the United Nations and regional systems contributed to their apparent second-class status. Despite a long rhetorical commitment to the equality and indivisibility of all human rights, until the 1990s the UN system was primarily oriented toward civil and political rights. Moreover, few international and national NGOs focused on ESCR. Governmental and NGO agents instrumental in development work also tended to be unaware that they were helping to realize (or sometimes to obstruct) the fulfilment of ESCR. They did not act within an explicit rights framework, nor identify themselves as promoting human rights.

In recent days, more and more intergovernmental organizations (IGOs), NGOs and Northern external relations agencies integrate human rights, including ESCR, more fully into their agendas. Canada has been among the leaders in the movement to strengthen the place of human rights in foreign policy, but others have gone further (at least rhetorically) in their pledges to incorporate ESCR and participatory rights into their policies.

A factor contributing to the augmented interest in ESCR was the series of UN global conferences in the 1990s - notably the World Conference on Children, the Earth Summit, the Social Summit, the Fourth World Conference on Women, the Education for All Conference, the World Conference on Human Rights, the Population and Development Conference, Habitat II and the World Food Summit.

The increasing focus on ESCR has arisen during the epoch of globalization. Interest in ESCR has been catalysed by perceived inequalities in the distribution of globalization's benefits, and by added harm for vulnerable groups when capitalist economies in Asia and elsewhere stumbled. Many societies and elites were seen to be market-based but not rights-based.

A small but growing number of thinkers ask whether Canada should act in train with like-minded governmental and NGO partners, by amplifying attention on ESCR in foreign policy, especially regarding external aid. If not, what are the reasons for Canada to take a different direction? If Canada does decide that it is worthwhile to incorporate human rights more explicitly into foreign relations and development assistance policy, how can this be done so as to achieve noticeable positive impact?

2.2 Policy Shifts of Like-Minded Donor Countries

Several States with whom Canada often shares goals and methods in foreign policy have opted for a higher emphasis on human rights in development aid, including Norway, the United Kingdom and Sweden. As part of this trend, their spokespersons have stressed the need to raise the profile of ESC rights, either on their own or as an indivisible companion with civil and political rights. To illustrate, this is how Norway's Minister for International Development and Human Rights reiterated Norwegian policy in March 1999:

...

> We can - and we should - cooperate in the family of nations on the common understanding that the human rights debate is no longer only about civil and political rights. And human development is no longer only about economic growth.

...

> We must give the economic, social and cultural rights their rightful place in the human rights machinery and in practice. Human rights constitute an integrated whole. Combating poverty - or eliminating poverty, I would rather say - is one of the most urgent human rights challenges of today. Civil and political rights and economic, social and cultural rights are mutually reinforcing. We need to act on this understanding. This, again, is a matter of global accountability.

Policy statements announcing similar standpoints have been made by Ministers and others responsible for ODA in Britain and in Sweden. Here is one clear example:

> [T]he Government has ... established that work to promote respect for human rights must be an integral part of Sweden's foreign policy. ... Human rights are indivisible. It is therefore a misapprehension to believe that human rights are something we pursue as long as they do not encroach on other areas, such as trade and foreign policy. .... Without renouncing civil and political rights, the Government wants to draw greater attention to economic, social and cultural rights ... In development cooperation we can assist people to demand their rights, free themselves from poverty and take control of their own future.[2]

IGOs whose participants include Canada's usual partners have also signalled a desire to ensure that their efforts pay heed to the rights of and dignity of people affected by their programs, e.g. the World Bank and the OECD, though not always in explicit human rights language. Notably, the European Social Charter, promulgated in 1961 and upgraded with an optional Additional Protocol in 1988, was recently strengthened (although the revisions are not yet in force).

2.3 Policy Shifts in the United Nations Family

The UN Secretary General and the High Commissioner for Human Rights (HCHR) have called for the integration of human rights into all spheres of the UN galaxy, as part of overall reform. The World Health Organisation and Unicef respectively place health rights and children's rights at their core. A recent convert to the view that human rights, especially ESC rights, should be nearer the heart of its planning and activities, is the United Nations Development Program (UNDP).

In January 1998, the UNDP and Mary Robinson, the High Commissioner for Human Rights, jointly inaugurated a policy document called *Integrating Human Rights with Sustainable Human Development*. The High Commissioner conveyed these thoughts during the launch:

> Human rights bring to the development discussion a unifying set of standards - a common reference for setting objectives and assessing the value of action. The rights approach will enhance the human dimension of UNDP strategies.[3]

In the document, the UNDP promises that "human rights will be mainstreamed in its activities and not relegated only to specific human rights projects" and contemplates

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[2] Ministry for Foreign Affairs Press Release, 10 March 1998, quoting the Minister for Foreign Affairs, Lena Hjelm-Wallén.

[3] The UNDP website is *http://www.undp.org*, but the document is easier to find through the UN human rights site at *http://www.unhchr.ch*.

developing "a human rights-based framework in its antipoverty, pro-sustainable human development work".

The UNDP has promised to complement efforts by the HCHR toward system-wide coordination and mainstreaming of human rights in the UNDP and in the UN generally. The UNDP has produced a Policy on Human Rights to guide related work with national governments. Part of the basis for UNDP's policy adjustment is expressed as follows:

> "Since the early 1990s human rights have played a prominent role in international development cooperation. United Nations Conferences from Rio in 1992 to Rome in 1996 have highlighted crucial links between the three goals of the UN Charter: peace, development and human rights. For UNDP, human rights are central to the concept of sustainable human development and an important aspect of any governance activity. Indeed, the two international legal instruments upon which sustainable human development is founded - the 1948 Universal Declaration of Human Rights and the 1986 International Covenant on Economic, Social and Cultural Rights ... formally link human rights with development."
>
> ...
>
> UNDP's approach to human rights is universal and holistic, stressing the indivisibility and inter-relatedness of all human rights-economic, social, cultural, civil and political. Given that UNDP is a development agency, special attention will be paid to economic, social and cultural rights (by developing indicators to measure realization of these rights, for example) and to the human right to development.
>
> ...
>
> Although UNDP already engages in national, regional and global human rights policy discussions, it can benefit greatly from a more active role. For example, substantive human rights debates are taking place on the right to development and the way to make that right operational at the international and national levels, on the role of technical cooperation and capacity development in human rights, and on the intended and, more important, the unintended effects on human rights of development programming by multilateral and bilateral development assistance agencies, international finance and trade institutions, and governments and NGOs...[4]

To lay the foundation for long-term implementation of its human rights policy, the UNDP has developed a three-year plan on Human Rights Strengthening (HURIST).[5] The "focus of

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[4] "INTEGRATING HUMAN RIGHTS WITH SUSTAINABLE HUMAN DEVELOPMENT", *Management Development and Governance Division (UNDP) Newsletter*, Volume 6, Number 1, February 1998.

[5] "STRENGTHENING HUMAN RIGHTS", *Management Development and Governance Division (UNDP) Newsletter*, Volume 6, Number 3, August 1998.

the programme will be in addressing the main constraints that countries face in their promotion of human rights and in applying a human rights approach to development, keeping them from complying fully with their treaty commitments".

2.4 Concerns of Non-Governmental Organizations (NGOs) and Others in Civil Society

Human rights and development NGOs, churches, trade unions, aboriginal groups, consumer associations and others have shown a heightened interest in ESCR. Oxfam, for example, in a worldwide campaign, distributes the Oxfam Charter for Basic Human Rights. This affirms that every person has a right to: Enough to eat; A livelihood; An education; A safe environment; Equality of opportunity; Clean water; A home; Healthcare; Protection from violence; and A say in the future.

At the Vienna+5 NGO Forum in 1998, representatives from 150 NGOs and other participants prepared a Declaration and Programme of Action for consideration by the UN. The sessions and resulting recommendations indicated a strong interest in ESCR.

The utility of the Internet for human rights education and advocacy has helped to magnify the interest and participation of local and national NGOs concerning ESCR.[6] Many NGOs who focus on ESCR use the Internet to research the burgeoning data available through websites maintained by the Office of the HCHR, UNICEF, UNDP, the International Labour Organization and others. Countless NGOs use the Internet to learn from each other and to coordinate efforts in ESCR and related fields (such as environment and development); some maintain their own websites. Internet access has increased the opportunities for local NGOs to gain outside support for their efforts, as well as knowledge that can enhance their effectiveness.

2.5 New Interest and Publications from Scholars and Activists

In the 1990s, new and important publications have intensified the spotlight on ESCR. Among those looked at in foreign policy palavers are:

Andre Frankovits and Patrick Earle, for The Human Rights Council of Australia, *The Rights Way to Development - Manual for a Human Rights Approach to Development Assistance*, 1998.

Julia Hausermann, *Rights and Humanity - A Human Rights Approach to Development, The International Movement for the promotion and Realisation of Human Rights and Responsibilities*, A Discussion Paper Commissioned by The Department for International Development of the UK Government, 1998

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[6] A new resource to assist human rights research on the Net is available through the website of (or by mail from) the American Association for the Advancement of Science: [details at Roundtable]

Human Rights Internet and DFAIT, *For The Record: The UN Human Rights System* (Ottawa: 1997 and 1998)

Paul Hunt, *Reclaiming Social Rights - International and Comparative Perspectives* (Aldershot, UK: Dartmouth Publishing, 1996)

A fuller list of significant sources is found at the end of this Paper, under *Related Reading*.

3. QUESTIONS TO LAUNCH THE ROUNDTABLE DIALOGUE

3.1 Development Assistance

3.1 (a) Core Questions on ODA

A discussion that the Roundtable may be called upon to undertake concerns the best sequence for addressing questions presented in part 3.1. The author sees some benefit in leaving the three Core Questions for last, but the Roundtable group may prefer a different ordering.

CQ1 ***A Core Question:*** For some time Canada's development assistance (ODA) has included support for human rights, focusing on such priorities as poverty reduction, gender equity, children's rights, democratization and support for the rule of law. One of the big questions is whether Canada should continue its current policies of inclusion of human rights in ODA, or go further by emulating the expanded commitments that some allies in the donor community are making. Should Canada put human rights, especially ESCR, more centrally on its foreign aid agenda? [The writer wonders if this pivotal question should perhaps be examined only after other questions listed below have been canvassed.]

CQ2 ***A Second Core Question:*** A foundational issue is whether ODA actually needs to take on more of a rights-based approach in order to seek poverty reduction and other goals linked to a life of dignity for all. Is the language and approach of ESCR merely an attractive cloak, or does it add something of substance and value to ODA policy?

CQ3 ***A Third Core Question:*** The official global consensus is that all human rights are equal. Yet is it more realistic for foreign policy professionals to view ESCR as akin to entitlements or aspirations, and less binding as rights than are civil and political rights? [That is not the view of the author, but it is a question that should perhaps be contemplated by the Roundtable.]

If Canada does decide to act in step with UNDP and/or with countries going in a similar direction, the Roundtable discussions may help DFAIT and CIDA officials to work out specifics of Canada's related ODA endeavours. Even if Canada does not follow the same road as Norway and others, specific elements of their initiatives may prove appealing. Canada's foreign policy thinkers could look to the Roundtable's report as a source for options

that seem realistic for Canada. Thus, whatever decisions Canada's foreign policy shapers may make concerning ESCR, the Roundtable's dialogue on the questions posed below will be valuable. Each question is addressed directly to Roundtable participants.

3.1 (b) Recent Policy Shifts of Like-Minded Donor Countries

Q.1 Several donor States have resolved to heighten their attention on human rights, and ESCR in particular, in ODA efforts. A few aspects of these new ODA policies were briefly outlined in section 2 this Paper. Do you know other key details of the policies of such countries, especially regarding ESCR, that would assist the Roundtable in its discussions?

Q.2 What are the arguments in favour of Canada pursuing a path on ESCR that is parallel to that of countries such as the UK, Norway or Sweden?

Q.3 To the extent that the details are known, are there obvious flaws in the approaches being taken by the named countries, or reasons to be wary of following the same course?

Q.4 If you would not recommend wholeheartedly a policy evolution toward more human rights integration in ODA, are there discrete components that you think Canada should pursue, pertaining to ESCR?

Q.5 What opportunities do you see for Canada to work jointly with like-minded States in the field of ESCR?

Q.6 Are there special contributions that you think Canada might make if it chooses to stress ESCR more vigorously in its ODA work?

[Note: A number of subject areas and questions covered later in Section 3 also have relevance to ODA.]

3.1 (c) ESCR Promotion Through United Nations Agencies

Within the UN family, several agencies have explicitly taken on a rights-based agenda; the next Questions pertain to those approaches.

United Nations Development Program (UNDP)

The UNDP, in alliance with the HCHR, has pledged to move human rights, including ESCR, to centre stage. The UNDP has initiated pilot projects that attempt to manifest the UNDP's new rights-based philosophy, through the HURIST program mentioned in part 2.2 above. The program has four "windows":

Window 1 will focus on the development of human rights capacity in institutions of governance and in institutions specially devoted to the promotion of human rights. It will test guidelines for the development of national human rights plans. Pilot activities will be

conducted in five countries and will offer the basis for workshops to compare experiences and develop best practices.

Window 2 will focus on the testing of guidelines for a human rights approach to sustainable human development. Pilot activities in five countries will focus on development areas like poverty, gender, environment, water and sustainable livelihood and provide material for studies and comparisons at workshops and in case material.

Window 3 will examine the human rights implications of globalization.

Window 4 will provide more flexible programming support to UNDP Country Offices, in response to requests from countries that want to develop their capacity to promote human rights with assistance from UNDP and the OHCHR.

Q.1 Are there facets of the UNDP's rights-based approach that you think Canada should consider adopting?

Q.2 Should the Canadian International Development Agency (or other arms of the government) inaugurate pilot activities on ESCR in selected projects or country/regional programs?

Q.3 Are there parts of the UNDP program that Canada should seek to support jointly with UNDP?

Q.4 Is it likely that the UNDP's conversion to a focus on human rights will lead to perceptible added benefits for the intended local beneficiaries?

Q.5 The UNDP publishes an annual Human Development Index. If its categories of statistical comparison were more closely tied to categories needed for assessment of "progressive realization" under the ICESCR, it might be easier to judge States' progress in meeting ESC rights obligations. Is this a concept that you would recommend for Canada to explore multilaterally?

<u>Right to Development</u>

The UNDP and the High Commissioner for Human Rights (HCHR), along with many diplomats from the South, praise the importance of the right to development. The concept of the right to development is often relied on to strengthen the arguments of Third World representatives who seek more Northern aid, but fewer strings. The *Declaration on the Right to Development* declares that individual human beings are to be the beneficiaries of development, and that this involves protection and implementation of each of their economic, social, cultural, civil and political rights. In the writer's view the right to development must not be divorced from the underlying human rights that it emphasises. A key tenet of the Declaration is the requirement for meaningful participation by the intended beneficiaries in the planning, execution and enjoyment of sustainable development.

Q.1 How do you think Canada should treat the overarching "right to development", in comparison to the individual and collective ESCR rights found in the *International Covenant on Economic, Social and Cultural Rights* and in the *Universal Declaration of Human Rights*?[7]

Optional Protocol on ESCR

Over the past decade leaders in the study and promotion of ESCR have campaigned for the establishment of an Optional Protocol to the Covenant on ESCR. Countries who agreed to be bound by this optional instrument would permit individuals and groups to lodge complaints with the UN Committee on ESCR, alleging that a State party had violated ESC rights. [Individual complaints have long been allowed elsewhere in the UN system re civil and political rights violations.]

Q.1 Is an Optional Protocol on ESC rights an objective that Canada should support strongly?

Q.2 If so, are there particular elements that you would recommend that Canada seek in Protocol entitlements and procedures?

National Human Rights Action Plans

The idea of national human rights action plans gained credence at the Vienna World Conference on Human Rights in 1993 and later at the World Summit for Social Development and the Beijing World Conference on the Rights of Women. The UN's HCHR has expressed support for the concept of national plans. Norway is one country that has taken the concept to heart:

> Human rights start at home. We in the Norwegian Government are now intensifying our efforts to keep our own house in order. We recently issued the first annual report on what we have done to promote human rights, at home and abroad. In line with the Vienna Declaration and Plan of Action we are also drawing up a national plan of action for human rights. It will be presented to the national assembly this year.

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[7] We know that the ability to exercise civil and political rights (participation in public affairs, freedom of expression, access to information, freedom of association, etc.) is reciprocally linked to the attainment of ESCR (education - including literacy, adequate health protection and care, an adequate standard of living for families and so on), and that the *Declaration on the Right to Development* acknowledges this linkage. These connections between the two main categories of human rights were understood long before the *Declaration on the Right to Development* was adopted by the UN, however.

> In order to support other countries in drawing up their own national plans, the Norwegian Government last year pledged USD 1 million to the Office of the High Commissioner for Human Rights.[8]

Q.1 Would you recommend that Canada seek to work with other donors and/or with the HCHR to provide technical support for the design of national action plans - as well as mechanisms for reviewing progress in plan implementation?

Q.2 Under the 1996 Constitution of South Africa, national bodies receive yearly information on progress made in achieving human rights, including ESCR. Based on experience in South Africa and analogous experience elsewhere, would you recommend that Canada adopt a practice of reporting annually to Parliament on its activities in support of ESCR and other rights in its foreign relations?

Q.3 Are there regional organizations such as the Commonwealth or la Francophonie through which Canada could make a special contribution in the development and implementation of national human rights action plans?

Q.4 Is it appropriate for Canada to provide advice and technical assistance on national action plans without creating a plan of its own?

UNICEF and the Rights of the Child

UNICEF proudly points to the UN *Convention on the Rights of the Child* (CRC) as a defining document for UNICEF work. "In advocating for the adoption of the Convention on the Rights of the Child, UNICEF has transformed itself from an agency dedicated to improving the welfare of children to an agency working with children and others to realize the rights of children."[9]

The CRC addresses social rights and civil and political rights in a single instrument. Focusing on the rights of the child can also facilitate promotion of ESCR for women, families and wider communities. For instance, support for the health, food, water and housing rights of children will necessarily have impacts on society in general.

Q.1 Would you recommend that Canada rely more on the *Convention on the Rights of the Child* in framing ODA policy?

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[8] Hilde Johnson, Norwegian Minister for International Development and Human Rights, at the 55th Commission on Human Rights, United Nations, Geneva, 26 March 1999.

[9] Frankovits and Earle, 34.

Q.2 Are there lessons that Canada can learn from UNICEF's experience to date in applying the CRC to all aspects of its work?

The International Labour Organization (ILO) and Core Labour Rights

Although the ILO has existed longer than other human rights entities (since 1919) violations of the rights of workers, including child workers and bonded labour, continue throughout the world. Violation of workers' rights may also have greater impacts on women, who are often employed in exploitive work situations - in special economic zones and in other contexts. On 18 June 1998 the ILO adopted a Declaration on Fundamental Principles and Rights at Work, affirming agreement on universal core labour standards found in certain ILO Conventions: abolition of forced labour (Conventions 29 and 105); freedom of association and the right to collective bargaining (Conventions 87 and 98); abolition of child labour (Convention 138); and Non-Discrimination in Employment (Conventions 100 and 111).

Q.1 Are there steps that you think Canada should take to strengthen its support for the Core Labour Standards in the international arena?

Q.2 Are there steps that Canada should take to strengthen the ILO generally or the enforcement mechanisms of the ILO?

Q.3 Is Canada doing the right things to encourage international joint efforts and dialogue among worker representatives (North-South, globally, etc.) aimed at promoting and protecting ESCR?

At the UN Commission on Human Rights in March 1999, Derek Fatchett, the UK Minister of State for Foreign and Commonwealth Affairs, confirmed that his government was "adopting a rights-based approach to development assistance by tackling those structures of Government and society which disadvantaged the poor and resulted in persistent discrimination and impoverishment of women, children, indigenous peoples, or those with disabilities".

Similarly, Canada has also expressed strong commitments respecting actions on behalf of the rights of women and children in its foreign policy; but its efforts regarding indigenous peoples and persons who have disabilities are less well known.

Q.1 Assuming that you are aware of Canadian international efforts to promote employment, traditional livelihood and other rights of indigenous peoples, are there policy elements or steps that you would recommend for Canada in this field?

Q.2 Assuming that you are aware of Canadian international efforts to promote employment, educational and other rights of persons with disabilities, are there policy elements or steps that you would recommend for Canada in this field?

Avenues for Combatting Exploitive Child Labour

Canada has placed children's human rights high on its foreign policy list. The areas of focus have included combatting exploitive child labour, stopping sexual exploitation of children and the use of "child soldiers", and re-integrating affected children into society (including assuring appropriate educational and work opportunities). Hon. Lloyd Axworthy outlined in 1996 three areas where Canada was deploying development assistance to overcome problems of child labour: access to primary education, with particular attention to girls; improving the status, role and economic security of women as equal partners in development (thus promoting the well-being of children) and support for good governance (so that governments can advance social development goals in partnership with civil society, and enforce existing laws and regulations governing the employment of children). Canada has supported a number of projects that specifically help children who are most vulnerable under systems of child labour. Among other initiatives, Canada also contributes to the ILO International Program for the Elimination of Child Labour. The ILO has been pushing for a new international convention on child labour, and Canada has been supportive.

Q.1 Assuming that you are aware of Canada's efforts to combat exploitive genres of child labour, are there additional policy elements or steps that you would recommend for Canada in this field?

Q.2 Should Canada take an even stronger role in working towards an international convention on child labour?

Q.3 Are there components of the draft ILO convention that Roundtable participants want to underscore as being worthy of special support or needful of strong revision?

Q.4 Is this an area in which Canada is (or should be) showing the kind of world leadership it has displayed with respect to the banning of anti-personnel land mines?

Q.5 Are there other areas of children's rights that you wish to address in Roundtable discussions?

World Health Organization (WHO)

The WHO explicitly refers to the right to health as a focus of its objectives, and has worked to find reliable indicators of gradual achievement of a country's obligations with respect to the right to health. The Organization's constitution refers to the enjoyment of the highest standards of health as a fundamental right of each human being.

Q.1 Should Canada adopt the WHO approach in supporting health-related programs in ODA, by judging plans and outcomes through the lens of "the right to health", including health care and preventive health?

Q.2 Assuming that you know salient details of WHO programs and of Canada's efforts in the domain of the right to health, are there additional policy elements or steps that you would

recommend for Canada in this field, e.g. efforts to identify violations of the right, or indicators of gradual realization of the right?

3.2 The International Bank for Reconstruction and Development (World Bank)

The World Bank long resisted importing notions of "conditionality" pertaining to human rights or environment into its practices. The Bank often required recipient countries to create what was regarded as a better climate for business and investment - as a condition of aid - but held that its rules and mandate dictated abstention from human rights conditionality. After years of criticism about projects that harmed less advantaged groups, the Bank set up an Inspection Panel in 1993, to receive and investigate complaints about alleged Bank non-compliance with its own policies and procedures. Some authorities suggest that the Inspection Panel is an implicit acknowledgement that the human rights of ordinary people must be respected in programs and projects that have World Bank support.
A set of proposals concerning integration of ESCR into World Bank plans and actions was put forward by Paul Hunt in his 1996 book, *Reclaiming Social Rights*.[10] Paul Hunt's propositions regarding the World Bank may be summarized as follows:[11]

1. The Bank's support for projects should incorporate a system of human rights impact assessments, based on UN treaties, and in cooperation with UN treaty monitoring bodies.

2. The Bank itself should be seen as subject to international human rights law.

3. The Inspection Panel should use its position to foster ESC rights in its decision-making

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Q.1 Should Canada use its influence within the World Bank to support one or more of the proposals put forward by Paul Hunt?

Q.2 Are there fundamental difficulties with any part of Professor Hunt's package of suggestions?

Q.3 Assuming that Canada's foreign policy establishment (including the Department of Finance component) could support elements of the Hunt proposals, are there other international financial institutions for which Canada should take a similar stand?

3.3 International Trade, Investment and Finance

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[10] Professor Hunt (now a member of the UN Committee on Economic, Social and Cultural Rights) acknowledges a number of earlier sources for his proposals.

[11] Hunt, 196-203

As markets have become more dominant and States have stepped back from some of the tasks (some would say responsibilities) that had motivated governments earlier in the post-war era, consideration was rarely given to whether the actions of governments complied with international human rights agreements. Heed was not routinely given in negotiation of trade pacts to whether some terms might violate norms of labour rights, other human rights or environmental regulation. For example, in the North American trade deals, human rights and environmental questions were treated as side issues, while corporations apparently gained new rights to sue governments if they felt that corporate interests were harmed by State policies.

Globalization and Trade

A loud criticism made by segments of civil society in the age of globalization has been that while the "free market" is being globalized, equal efforts are not made to promote the social rights that bring harmony and balance to western market economies. Citizens' groups, and a few governments, opposed the impending Multilateral Agreement on Investment in 1998 because they saw it as a Trojan Horse through which transnational corporations could overwhelm workers' rights, environmental rights and social entitlements. Many felt that governments would be hamstrung if they wished to retain or revitalize national social safety nets in ways that would fulfil ESC rights obligations.

Labour and other civil society thinkers have also felt that worker and environmental rights were shunted aside in negotiations of regional trade deals such as NAFTA and in reworking the rules of the GATT/World Trade Organization.

Q.1 Are there issues that you would like to debate in the Roundtable concerning globalization, ESCR and foreign policy?

Q.2 Should Canada ensure that members of the government personnel dealing with trade in relevant departments and agencies (DFAIT, Justice, Finance, Human Resources and so on), receive appropriate instruction and advice on Canada's international human rights obligations and in particular ESCR?

Q.3 Should Canada support the idea of a review by UN human rights bodies of international law on trade and investment to identify inconsistencies with international human rights law?

Q.4 Should Canada adopt a policy of insisting that trade and investment pacts be designed to avoid violations of workers' and other ESC rights found in ILO conventions and UN treaties?

Canadian Investment Abroad

UN Secretary-General Kofi Annan has challenged the business community to engage in a global compact of shared values and principles. There has been a strong trend in OECD countries toward formulation of voluntary codes of conduct on ethical practices for international investment by private firms. The impetus has come largely from consumer, church, human rights and labour organizations. Some business and regulatory organizations

have also shown leadership, agreeing that the legitimate expectations of corporations (for example to make an honest profit and to receive reasonable compensation for expropriation) should be matched by development strategies that protect basic human rights. The Canadian government has supported a number of initiatives involving studies of codes of conduct and creation of new ones for individual corporations or for groups of companies.

Q.1 To what extent do you think Canada should require Canadian-based corporations to respect and/or promote international ESCR in their activities abroad?

Q.2 Should Canada advocate more human rights-based rules - through IGOs for transnational corporations?

Q.3 Should Canada adopt general "selective purchasing" or "selective commercial credit" policies whereby the government refuses to award contracts or export financing ass stance to companies whose activities help other States to commit egregious violations of ESC rights?

International Financial Institutions and Currency Speculation

Although controls on speculative capital flows are normally seen as the purview of economists, one can argue for controls on human rights grounds. The economic fallbacks in Mexico, Asia and elsewhere in recent years have been blamed partly on currency speculation. While the effects of economic malaise harmed financial institutions and businesses, they also caused great damage to countless other people.

Q.1 Should Canada seriously consider support for the Tobin Tax and/or for other ways of controlling monetary flows across borders - on human rights grounds?

At the Vienna+5 NGO Forum in 1998, the following were recommended regarding International Financial Institutions:

- that the High Commissioner for Human Rights sign a Memorandum of Understanding (MOU) with the International Financial Institutions (IFIs) to mainstream human rights into the operations of the IFIs;
- that IFIs should carry out a human rights impact assessment before implementing any project or program; IFIs should make these impact assessments public; and such assessments should be used in the planning, implementation, and evaluation of the projects or programs, following consultation with those potentially affected by the project or program, as well as local and international NGOs;
- that IFIs should report to the human rights treaty bodies on how their practices have affected the situations in countries in which they operate; and
- IFIs should establish mechanisms to ensure systematic consultation with national and international NGOs in both the design and implementation of programmes.

Q.1 What position do you think Canada should take concerning these recommendations?

3.5 Women's Human Rights

Gender equity and women's rights are officially at the forefront of Canadian policy. Because Canada mainstreams women's rights and gender considerations in its foreign policy, these priorities cut across all subject areas covered in the present Discussion Paper. On the international scene, UN human rights treaties including the *International Convention on Economic, Social and Cultural Rights* call for non-discrimination on the basis of sex, as well as for equal rights for women and men. In addition, the *Convention on the Elimination of All Forms of Discrimination Against Women* (CEDAW) incorporates ESC rights and civil and political rights in one document. Since issues of women's human rights (and the rights of the girl child) apply along the full range of subjects in the present Discussion document, it seems appropriate to ask one all-encompassing question of Roundtable participants:

Q.1 With respect to any issue raised or not expressly included in this Discussion Paper, is there an additional gender perspective that needs to be addressed?

3.6 Other Human Security Issues Pertinent to ESC Rights

Additional ESCR implications pertain to many other elements of the foreign policy matrix. If time permits, Roundtable dialogue on these matters might also be desirable. To keep this Discussion Paper to a reasonable length, the author has not proposed specific questions for the following areas:

3.6 (a) International Criminal Court
3.6 (b) Peacekeeping and International Humanitarian Law
3.6 (c) Economic and Other Sanctions
3.6 (d) Environment, Resources and Sustainable Development
3.6 (e) Canada, ESCR and the Inter-American Human Rights System
3.6 (f) Reporting to and Supervision by UN Treaty Bodies
3.6 (g) Domestic Obligations Re Implementation of Treaties
3.6 (h) Reporting to and Supervision by Treaty Bodies
3.6 (i) International Rights of Persons with Disabilities
3.6 (j) Immigration and Refugee Policy
3.6 (k) Many recommendations from participants in the Vienna+5 NGO Forum at Ottawa in 1998, concerning ESCR
3.6 (l) Other recommendations made by the authors of resources in the appended *Related Reading* List

Q.1 Are there lines of inquiry related to any of the above fields that you might propose to shape Roundtable discussions regarding?

4.1 CLOSING QUESTIONS

Q.1 Did we ask the right questions? Are there one or two key questions that you still would like to address?

Q.2 Are you aware of evidence of important new support for or understanding of ESCR rights internationally - support that was not highlighted in this Paper?

Q.3 Is there practical advice you want to share that perhaps became lost in the detail of earlier questions?

Related Reading

Audrey Chapman, "A Violations Approach to Monitoring Economic, Social and Cultural Rights", (1996) 18 *Human Rights Quarterly* 23

Economic, Social and Cultural Rights: Fifty Years After the Universal Declaration, Proceedings of an International Human Rights Workshop, Faculty of Law, University of British Columbia (October 1998)

Asbjorn Eide, Catarina Krause and Allan Rosas, editors, *Economic, Social and Cultural Rights - A Textbook* (London: Martinus Nijhoff, 1995)

Andre Frankovits and Patrick Earle, *The Rights Way to Development - Manual for a Human Rights Approach to Development Assistance*, The Human Rights Council of Australia, 1998

Julia Hausermann, *Rights and Humanity - A Human Rights Approach to Development, The International Movement for the promotion and Realisation of Human Rights and Responsibilities*, A Discussion Paper Commissioned by The Department for International Development of the UK Government, 1997

Human Rights Internet and DFAIT, *For The Record: The UN Human Rights System* (Ottawa: 1997 and 1998 - in printed, Web-based and CD-ROM versions)

Paul Hunt, *Reclaiming Social Rights - International and Comparative Perspectives* (Aldershot, UK: Dartmouth Publishing, 1996)

International Commission of Jurists, *Economic, Social and Cultural Rights - A Compilation of International Instruments* (Geneva: ICJ, 1997) [This volume includes the Limburg Principles, the Maastricht Guidelines the Bangalore Declaration and other documents.]

Ripple in Still Water: Reflections by Activists on Local- and National-Level Work on Economic, Social and Cultural Rights International Human Rights Internship Program, Institute of International Education, Washington, D.C., 1997

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Websites

Office of the High Commissioner for Human Rights: *http://www.unhchr.ch.*

United Nations Development Programme: *http://www.undp.org*

International Labour Organization: *http://www.ilo.org*

World Bank: *http://www.worldbank.org*

Human Rights Internet: *http://www.hri.ca*

American Association for the Advancement of Science (Science and Policy - Human Rights): *http://www.shr.aaas.org*

[One should also visit the websites of the Canadian Centre for Foreign Policy Development, of the Department of Foreign Affairs and International Trade, of the Canadian International Development Agency.]